

## Proposed Riparian Checklist “Handbook”

### Directions for Completing City’s Checklist for Riparian Corridor Policy Setback (RCPS) Exceptions

#### List of Suggestions:

1. *To use “setback guideline checklist” for every project application that incorporates a riparian setback of less than 100 feet.*
2. *As a training exercise, use checklist as scoring guide against previously approved projects.*
3. *The checklist should be a part of the EIR review process and should be filled out by planning staff.*
4. *Planting the setback area with riparian plants by itself cannot qualify a project for an exception and that is made clear in the handbook, below. ‘Restoring the corridor’, however, might qualify if it is an exceptional improvement and involves more than just planting. This concept is included in the handbook, below.*
5. *Coordination among all departments (e.g., Planning, the Dept. of Parks, Recreation, and Neighborhood Services (PRNS), the Dept. of Transportation (DOT), Dept. of Public Works, etc.) is highly encouraged.*
6. *Add a Glossary of Terms*
7. *Professional reports required by various Riparian Corridor Policy guidelines should be prepared only by recognized and certified professionals in the particular riparian issues being addressed.*
8. *City biologists, hydrologists, etc. should review all professional reports and advise planning staff of their findings.*
9. *To create impartiality, the Planning Director should select and oversee the professional’s work directly. The development applicant would provide the required funds.*

Following is suggested handbook language to address the checklist items as well as questions for us or for staff (*italics*) where CalSJ doesn’t have the required information. References to passages in the Riparian Corridor Policy Study (RCPS) are provided parenthetically.

#### Circumstances That May Warrant a Setback Exception

☐ **Site is located in or near downtown San Jose.**

“Downtown” is the Downtown Core as identified and mapped in the current edition of the City’s General Plan 2020. “Near Downtown” is the Downtown Frame, also found in General Plan 2020. (RCPS, Page 31 and 32, first bullet)

☐ **Site is a small (one acre or less) urban infill location, i.e. where most properties are already developed and parcels are generally small (one acre or less).**

These areas would generally be downtown sites or small scale residential neighborhoods, usually developed and/or subdivided for single family or two family residences. (RCPS, Page 32, 2nd bullet)

☐ **Site is adjacent to small lower order tributary whose riparian influence does not extend to 100 feet.**

Satisfying this criterion will require the submittal of a professional report detailing the extent of riparian influence on the subject property. Professional reports must be submitted by biologists, stream hydrologists and/or other appropriate professionals and must identify contributing professionals. They should be available to the public at least 60 days before the project goes to any public hearing, including environmental hearings. (RCPS, Page 32, 3rd bullet) (*Staff, please find a definition of lower order tributaries.*)

☐ **Site has unusual geometric characteristics and/or disproportionately long riparian frontage.**

To qualify for this exception, the geometric characteristics must be substantial and unambiguous and the site geometry must pre-date adoption of the Riparian Corridor Policy Study, May 17, 1994. It cannot be the result of any property reconfigurations since that date. (RCPS, Page 32, 4th bullet) *(Staff to create a working definition of "unusual geometry", etc. with examples of "unusual geometric characteristics and/or disproportionately long riparian frontages" provided by Staff. Include illustrations from Akoni's presentation on this topic.*

☐ **Pre-existing one or two family lots**

"Pre-existing one or two family lots" are lots intended, and previously subdivided, for one or two family use (i.e. only one single family house or one duplex on each lot). The exception applies only when proposed or existing development consists of one single family house or one duplex on each lot as originally intended. It can also be applied when a minor reconfiguration of an existing lot is proposed. This exception does not apply when any other use or density is proposed for said pre-existing lot.

It should be noted that this exception only applies to the *lot*, and only when the house, duplex and any accessory buildings have setbacks consistent with Riparian Corridor Policy setback guidelines, usually 100 feet. *Yards* are subject to riparian setbacks because they typically feature non-riparian vegetation, and single family and duplex yards have few limits on many human and other activities that might adversely affect a riparian corridor. (RCPS, Page 32, 5th bullet)

☐ **Site is being redeveloped with a use that is similar to the existing use or is more compatible with the riparian corridor.**

This exception does not refer to City Redevelopment Agency projects but to those limited public and private projects that involve significant changes to a pre-developed (developed before May 17, 1994) site that falls within a riparian setback area and is inconsistent with the intent of the Riparian Corridor Policy. If proposed changes or redevelopment are consistent with the impact conditions on the checklist and below, the project may qualify for this exception. If the project does not qualify, the site will be treated as vacant land. (RCPS, Page 32, 6th bullet)

The impact conditions most often rely on the word "significant", which is intended to allow some flexibility but also denotes a notable degree of magnitude and importance.

**Impact is considered significantly less only if all the following conditions are present:**

☐ **Proposed use is either the same or similar to existing use or is significantly more compatible with riparian corridor than existing use.**

This impact condition involves the relative compatibility of the existing and proposed land uses with the riparian corridor. City staff, not applicants, should make this determination since this is not a clear-cut issue. For example, a particular residential project (typically considered relatively benign) may have a much greater impact on a riparian corridor than a particular industrial project (typically considered disagreeable). A residential project may generate a sizable population drawn to the corridor, a great deal of traffic, pets, toxic landscape products, etc., while an industrial project may involve none of those impacts. This condition needs to be considered on a case by case basis. (RCPS, Page 32, 6th bullet)

☐ **Setback from riparian corridor is significantly greater than existing setback.**

Setback difference must be substantial and the setback must be at least 30 feet. (RCPS, Page 32, 6th bullet, Page 33, Mitigations and Conditions, 2nd bullet) But the concept of substantial may vary with the magnitude of the existing setback. The setback difference

should be inversely proportional to the magnitude of the existing setback. For example, if the existing setback is very minimal or non-existent, the proposed new setback difference should exceed 30 feet. But, if the existing setback dimension already approaches the normal setback required for this site and project type, the new setback difference may be minimal.

☐ **Proposed project height is significantly lower than existing height or no higher than existing building if existing building height is no more than 30 feet.** (RCPS, Page 32, 6th bullet)

☐ **Site coverage (structures and impervious surfaces) is significantly less than existing.**

The site area proposed to be occupied by buildings, structures and paving of any kind is significantly less than the aggregate area occupied by pre-existing buildings, structures and paving. (RCPS, Page 32, 6th bullet) So-called pervious pavers are considered 'paving' for purposes of this condition.

☐ **Project mass is significantly less than existing.**

If the mass of the pre-existing development is itself minimal and not detrimental to the wellbeing of the riparian corridor, the mass of any new or remodeled buildings should not exceed the mass of pre-existing buildings. Otherwise, the new project should represent a significant reduction in mass. (RCPS, Page 32, 6th bullet)

☐ **Project activity potentially affecting the riparian corridor is significantly less than existing.**

Project activity can consist of anything from the active presence of people and/or domestic animals to vehicular activities such as circulation, parking, loading, etc. or noise, dust, odor or toxics related activities. Staff and/or a qualified biologist or stream hydrologist should be consulted for a written opinion regarding the relative impact on the corridor from pre-existing and proposed activities. (RCPS, Page 32, 6th bullet and second set of bullets, 6th bullet)

☐ **Project generated noise will be significantly less than existing.**

"Significantly" means measurable, disruptive to the natural life and activities within the riparian corridor. (RCPS, Page 32, 6th bullet)

☐ **The proposed project has no other characteristics that could impact the riparian corridor more than the existing development and/or use(s).** A qualified biologist or stream hydrologist should be consulted for a written opinion regarding the relative impact on the corridor from pre-existing and proposed activities. (RCPS, Page 32, second set of bullets, 6th bullet)

☐ **Project proposes to implement measures which can protect and enhance the riparian value of the corridor more than could a 100-foot setback.**

The "measures" referred to do not include any that are required by the Riparian Corridor Policy guidelines. For example, planting the setback area with riparian vegetation is a standard guideline requirement and cannot be used as justification for a setback exception. The measures referred to would have to be exceptional, such as restoring a corridor, channel and/or a flood plain. (RCPS, Page 32, 7th bullet) Applicants should obtain a determination from Planning staff before checking this box.

*Staff, please identify and include some good examples of these measures.*

☐ **Project is a recreational facility(ies) deemed to be a critical need and alternative sites are limited.**

This exception is intended to apply only to public recreation projects. The “critical need” criterion applies to public recreation projects for which there is substantial unmet demand and there is a scarcity of sites that can accommodate the use as defined in the General Plan and/or identified in the GreenPrint. (RCPS, Page 32, 8th bullet)

☐ **Utility or equipment installations, or replacement of existing ones, which involve no significant riparian disturbance and only incidental human activity.**

This exception is intended to accommodate standard, small scale utility installations such as telephone poles, electric boxes, small pumps, transformers, etc. The installation cannot involve any significant riparian disturbance, including during construction. Large utility facilities such as power plants could not meet the criteria for this exception. (RCPS, Page 32, 9th bullet)

**IF ONE OR MORE OF THE SPECIFIC CIRCUMSTANCES LISTED ABOVE IS PRESENT, A REDUCED SETBACK MAY BE CONSIDERED IF ALL OF THE FOLLOWING ARE TRUE:**

☐ **There is no reasonable alternative, which avoids or reduces the encroachment into the setback area.** *Can we flesh out the concept of “reasonable alternative”? For example, reasonable alternative should not exclude the alternative of reducing the size of the project. And projects that would overwhelm the site should probably not qualify for an exception on the basis of “no reasonable alternative”.* (RCPS, Page 32, second set of bullets, first bullet)

☐ **The reduced setback will not significantly reduce or adversely impact the riparian corridor.**

Any negative impact on the corridor, including a minor one, would result in failure to satisfy this requirement. Minor impacts can include minimal introduction of non-riparian plant species, potential human and/or pet activity in the corridor or setback area, potential drainage or drift of incompatible landscape or drainage products into the corridor and/or setback area, etc. These impacts can also be major ones if they are probable and/or of significant magnitude. (RCPS, Page 32, second set of bullets, 2nd bullet)

*Can staff come up with more or better examples of “adverse impact”?*

☐ **Uses are not fundamentally incompatible with riparian habitats.**

This statement is true if none of the proposed project uses are those discussed and identified in Guideline 1B of the Riparian Corridor Policy as incompatible, or are similar to those uses. (RCPS, Page 32, second set of bullets, 3rd bullet and Page 30, Guideline 1B))

☐ **There is no evidence of stream bank erosion or previous attempts to stabilize the stream banks, which could be negatively affected by the proposed development.**

Making this determination will require a professional report prepared by a qualified biologist, stream hydrologist and/or other appropriate professionals. (RCPS, Page 32, second set of bullets, 4th bullet)

☐ **The granting of the exception will not be detrimental or injurious to adjacent and/or downstream properties.**

*Need to define detrimental.* However, making this determination will require a professional written report prepared by a qualified biologist, stream hydrologist and/or other appropriate professionals. (RCPS, Page 32, second set of bullets, 5th bullet)

☐ **A qualified biologist, stream hydrologist and/or other appropriate professional has confirmed in writing each of the above conditions in a signed report that is available to the public.**

Professional reports must identify all professional contributors and be submitted before City staff will make any commitment to reduced setbacks. Reports will be made available to the public upon a staff finding that the report is complete and acceptable, at least 60 days before the project goes to any public hearing. (RCPS, Page 32, second set of bullets, 6th bullet)

☐ **A qualified biologist, stream hydrologist and/or other appropriate professional has submitted a written program, signed and available to the public, for achieving all of the Habitat Protection Objectives outlined in the Riparian Corridor Policy.**

Professional reports and programs must identify all professional contributors and be submitted before City staff will make any commitment to reduced setbacks. Reports will be made available to the public upon a staff finding that the report is complete and acceptable, at least 60 days before the project goes to any public hearing. (RCPS, Page 32, second set of bullets, 6th bullet)

### **Mitigations and Conditions**

Projects with setbacks less than 100 feet should be conditioned to all measures necessary to ensure compliance with the purpose of the Riparian Corridor Policy, for example:

**A: Minimum reduced setbacks should be no less than 50 feet, except that the minimum reduced setback is 30 feet for small sites (no more than an acre) in urban infill areas where surrounding parcels are developed and also are no more than an acre.**

Setbacks are measured from the outer edge of the riparian corridor including the outer edge of tree canopies. (RCPS, Page 33, Mitigations and Conditions, first bullet; Page 31, Background, first paragraph)

**B: Minimum reduced setback for those limited sites being redeveloped with a similar or more compatible use should be a significant improvement over the pre-existing setback and should never be less than 30 feet.**

This reduced setback condition does not refer to City Redevelopment Agency projects but to those limited public and private projects that involve significant improvement to a pre-developed (developed before May 17, 1994) site with setbacks less than 100 feet. This condition merely states that the new or modified project must provide a setback that is a significant improvement over the existing setback, but in no case less than 30 feet. The word "significant" is intended to allow some flexibility but denotes a notable degree of magnitude and may vary with the magnitude of the existing setback. The setback difference should be inversely proportional to the magnitude of the existing setback. For example, if the existing setback is very minimal or non-existent, the proposed new setback difference should exceed 30 feet. But, if the existing setback dimension already approaches the normal setback required for this site and project type, the new setback difference may be minimal. (RCPS, Page 33, Mitigations and Conditions, 2nd bullet)

**C: Reduced setbacks for pre-existing one or two family lots should remain unused and undisturbed, except for the addition of riparian plantings.**

In some cases, particularly where single-family lots extend into or near riparian corridors, the "setback" is going to occur *within* the lot. The setback line needs to be fenced. The area on the house side of the fence is the usable yard; the area on the corridor side of the fence is the setback area and in some cases a portion of the corridor also. Even though the property owner may own the setback (and perhaps corridor) area, it must be left undisturbed and unused. This unusual relationship of the property line to the corridor and/or the setback area does not change the setback requirements for any buildings on site. (RCPS, Page 33, Mitigations and Conditions, 3rd bullet)

**D: Project includes treatment to prevent erosion and slope instability.**

If a project includes this kind of treatment, it should be included in a professional report that meets all of the requirements addressed above. If this kind of treatment is not applicable, check the "Not applicable" box. (RCPS, Page 33, Mitigations and Conditions, 4th bullet)

**E. Project includes on-site drainage and retention facilities.**

If a project includes this kind of treatment, it should be included in a professional report that meets all of the requirements addressed above. If this kind of treatment is not applicable, check the "Not applicable" box. (RCPS, Page 33, Mitigations and Conditions, 5th bullet)

*Integrate w/ current Storm Water retention/detention policy language?*

**F: Seeding or planting of bare soil** (RCPS, Page 33, Mitigations and Conditions, 6th bullet)

**G. Project site plan is designed to draw activity away from the riparian corridor.** (RCPS, Page 33, Mitigations and Conditions, 7th bullet)

**For example, the following should be located on the far side of buildings and as far as possible from the riparian edge:**

☐ **Noise generating activities,**

Problematic noise generating activities can include public or quasi public patios intended for daytime or night time use by groups of people such as for restaurant or reception purposes, significant musical or theatrical performances, sports courts, children's play areas, metal working or body shops, parking areas, loading areas, etc. (RCPS, Page 33, Mitigations and Conditions, 7th bullet)

☐ **Noise generating equipment,**

Any equipment generating a level of noise deemed by a professional to be disruptive to the natural life and activities within the riparian corridor. (RCPS, Page 33, Mitigations and Conditions, 7th bullet)

☐ **Activities or site features requiring night lighting,**

The Riparian Corridor Guidelines require a 200 foot setback for night lighting. Many problem activities and/or features requiring night lighting would be similar to those, above, which might generate noise. (RCPS, Page 33, Mitigations and Conditions, 7th bullet)

☐ **Entrances,**

Entrances should be located away from a riparian corridor when the entrances are major residential entrances, like a common entry to a multi-unit apartment building; the entry to a restaurant or other busy commercial establishment; or any other entrance that generates significant amounts of foot and/or vehicular traffic. This limitation is not intended to apply to the occasional entrance to a single housing unit or to a small and quiet business if any lighting associated with such entrances is shielded from the riparian corridor. (RCPS, Page 33, Mitigations and Conditions, 7th bullet)

☐ **Loading and delivery areas.**

Loading and delivery areas with significant traffic or serving large trucks (with more than two axles) should not be oriented toward a reduced riparian corridor setback area. (RCPS, Page 33, Mitigations and Conditions, 7th bullet)

**G. Any other measure reasonably necessary to achieve riparian protection.**

☐ **Consistency with all other Riparian Policy Guidelines**

In addition to the Setbacks sections of the Riparian Corridor Guidelines addressed in this document, project proposals must comply with the remainder of those RCPS Development Guidelines which apply, pages 33 through 48.

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This "Riparian Checklist Handbook" has been prepared by the Citizens for a Livable San Jose (CalSJ).  
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